Attitudes Toward the Dubious Compensation Claim

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SUMMARY

Laws providing for compensation of workmen for occupational injury are a powerful socio-economic force.

In settlement of compensation claims the goal, difficult to achieve, is fairness to employee, employer and insurance carrier. Often, medical, legal, economic and social considerations conflict with one another. A "fact" in one field may not be considered so in another.

Since medical data and testimony often guide the ultimate decision of a compensation claim, the physician's attitude is a large factor not only immediately and directly in determination of the case at hand but, perhaps more important, in the ultimate direction of the socio-economic forces which spring from the sum of all such determinations.

To perpetuate the good in workmen's compensation laws, the next generation of physicians—and of lawyers and business administrators as well, for they, too, are involved—ought to have basic training in the social sciences in order that they may have a broad rather than a segmental view of the problems with which they deal.

WORKMEN'S compensation laws have, in four decades, resulted in initiating powerful forces which have altered and are continuing to alter the economic status, the sociological relationships, and the systems of belief of the entire employed population, all employers, all insurance carriers, and large segments of the medical and nursing professions. It is probable that the magnitude of these changes has not yet been fully realized, and that most of the forces contributing to the total changes have not yet reached their ultimate effect.

It may be a generation before the social scientists will present a truly complete and objective account of the interacting forces which are profoundly affecting the total employed population in the United States. The object of this presentation is to offer some tentative opinions which may be of assistance in orienting physicians in this still changing pattern of social forces.

One of the first states to have such laws, California passed its first Workmen's Compensation Insurance Act in 1911. In its present form, under the extensive revision in 1917 of a more comprehensive act adopted in 1913, it is one of the most liberal laws in the 48 states, allowing unlimited medical care, provides relatively high compensation indemnity, includes coverage of "aggravation of a preexisting condition," and resolves doubt in favor of claimants. The word "injury" applies to any occupational disease. These liberal factors are generally accepted as being positive values and worthy of perpetuation.

This presentation will point out some trends which are believed by many observers to be inimical to the best long-term interests of the act and its beneficiaries, as well as to the medical profession, and will offer some explanations as to the origin of those trends. The words "liberal" and "liberalization," which have no fixed value, will be used frequently, and the reader must assess the values to be attached to the words according to their application in the text.

One has but to be familiar with the compensation laws of some other of our 48 states to recognize that California has indeed a liberal compensation act. Some states, for instance, limit the total cost of medical care to some sum such as $500, an amount which can be used very readily in two or three days of hospitalization for serious injury. Californians may be justly and properly proud of this liberal act. There is no intent here to criticize the California Workmen's Compensation Act or to appeal for a return to the "good old days." The good old days before the compensation laws existed were most certainly not so good for the injured employee. How bad they were is beyond the memory of the present younger generation. Industrially injured employees did not have even a remotely fair opportunity of being restored to health or of being supplied with sustenance without a court fight in which both the common law defenses and the court procedure were hurdles which they could seldom overcome.

Legal and claims authorities state that the act is administered under a philosophy described as "liberal interpretation of the law." The liberality of the act and the liberality of its interpretation are clearly and interestingly documented by Thomas,[1] chief counsel of the State Industrial Accident Commission, San Francisco, who noted that it "became the social policy of California to provide a means whereby substantial justice could be accomplished in all cases expeditiously, inexpensively, and without encumbrance. As part of that policy, it is provided by law that the benefit of any doubt must be given to the injured employee."

Most Americans, be they physicians or laymen, understand that fellow citizens in an unfortunate situation are customarily given the "benefit of any reasonable doubt." When it becomes more generally understood that under the compensation act—

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as currently interpreted, at least, by the Industrial Accident Commission's counsel—the claimant must be given the benefit of "any doubt," a partial explanation will be supplied for awards in favor of applicants whose claims appear rather dubious.

A more complete explanation of awards which sometimes puzzle physicians lies in the statement made frequently by compensation authorities but difficult to find in print—in medical literature, at least — that the compensation law is administered not only with "liberal interpretation of the law," but also with "liberal interpretation of fact." Thomas illuminated this point in a continuation of the paragraph already quoted: "Likewise, since the applicant in proceedings before the Commission is frequently an injured employee acting on his own behalf without legal aid, the rules of evidence were relaxed for his benefit. Therefore, in proceedings before the Commission the technical rules of evidence, particularly the hearsay rule, are not enforced, and rather wide latitude is permitted. The injured employee cannot be expected to procure medical reports from experts or specialists, but generally must rely upon reports of his family doctor or an attending physician who may not have the facilities for preparing an elaborate report. Consequently, injured employees are given benefits and considerations which are not accorded plaintiffs in the civil courts."

Illustration may help toward understanding that paragraph. Most physicians who have treated any appreciable number of industrial injuries are familiar with cases in which disease, not necessarily nor even usually caused by trauma, is demonstrated and disability exists—and yet there has been nothing in the history to account for any causal relationship between the employment and the disease. Moreover, there may have been repeated denials to the attending physician and to consultants, and to representatives of claims departments, of any accident, incident or event — and these denials may have been repeated many times over a period of many months. The award, when finally granted after a hearing before the Industrial Accident Commission, is based on the "fact" that the claimant at his hearing recalled a specific incident on a specific date at a specific time—not one detail of which had been recalled previously, but on the contrary had been denied many times previous to the hearing. This is a simple example of the "liberal interpretation of fact."

The same "liberal interpretation of fact" is applied to symptoms. A claimant with an apparently healed fracture in perfect alignment, causing no demonstrable disability of any kind, and described as "well" in the final clinical note, may be granted an award on the basis of a statement of pain or of some other complaint which cannot be verified.

Most California readers are familiar with the "aggravation of preexisting condition" clause, and it is not necessary for their benefit to elaborate on the statement that this clause is being interpreted much more liberally than in the 1930's.

To illustrate the increased liberality in the administration, Thompson[2] discussed myocardial infarction. Referring to liberalization by statute he stated, "The so-called Presumptive Act of the State of California is such that heart disease or pneumonia developing in any fireman or policeman is accepted as an industrial illness unless unequivocably proved otherwise." Also pertinent is Thompson's statement: "It has been pointed out that from the standpoint of industrial medicine the acceptance or the nonacceptance of the industrial origin of an injury or an illness is determined by the legal profession and public opinion, as this is carried out by the administration at state and possibly national levels. The gradual inclusion of more and more clinical conditions as industrial injuries is well known to all of us and the example of myocardial infarction is used to illustrate the progress being made toward this end."

This underscores the pressure on the practicing physician of today to ignore the application of scientific knowledge of etiology, and instead of offering a sound medical opinion which he should be qualified to express, to substitute an unsound legal opinion which attempts to anticipate the currently fashionable decisions of the Industrial Accident Commission. These are indeed unstable criteria on which to base a diagnosis. If the physician chooses to continue to express a medical opinion based on sound medicine, he risks being publicly overruled as being antagonistic to the patient's welfare and out of harmony with the philosophy of the administrative body to which the report will be presented — and appearing to have caused treatment to be delayed until after the hearing. If he attempts to compromise between sound medicine and fashionable decisions, he will undergo a frustrating experience.

It is because of these situations that the physician appears to have a most legitimate interest in the philosophies of compensation claims administration. Medical principles dictate a scientific approach to the facts, and these facts if well established medically may not be distorted or altered because of expediency. This is of vital importance to the physician, and is of vital importance to the practice of medicine. More on this later.

If it be stipulated that a liberal compensation law is being administered with liberal interpretation of the law and liberal interpretation of fact, is there a reasonable explanation as to why this compounding of liberalization has come about?

A most plausible explanation is at hand when one considers that there are three classes of unemployed persons for whom relief by law has been made available. These three classes are:

1. Those who are unemployed because of industrial injury.

2. Those who are well but for whom employment is not available.

3. Those who are unemployed because of nonindustrial disability.

Relief by law in California has been supplied for all three classes in the order in which they have been listed above. The Workmen's Compensation Law for the relief of industrial injuries was passed originally in 1911 (financed at employer's cost); relief for the unemployed through the State Unemployment Insurance Act was enacted in 1938 (at present financed at employer's cost); and the Unemployment Disability Insurance for persons with non-industrial disability became effective in 1946 (at employee expense unless the employer elects to contribute).

For 35 years — from 1911 to 1946 — a disabled claimant appearing before the Industrial Accident Commission was either granted an industrial award, or he was left dependent on his own resources, in the lack of which he became indigent. This constituted such a powerful appeal to administrators that it was difficult to feel that any great over-all social injustice was done if considerable latitude and liberality were exercised in classifying many extremely dubious claims as being industrial.

In other words, liberality of interpretation both of the law and of the fact appear to have sprung up for very natural reasons and as an inevitable reaction to fill the vacuum created by need. Insofar as the vacuum is now at least partly filled by the current Unemployment Insurance and Unemployment Disability Acts, the social justification for overliberalization (if such has existed) should be in diminuendo. Some social pressure for liberality may still exist if decisions are influenced because the benefits of the Compensation Act are considerably greater than those of the Unemployment Disability Act and because it is employer rather than employee funds which are to be expended under the compensation award.

If it be granted that these rather superficial, oversimplified observations are correct, one may legitimately ask why they concern physicians.

One very profound effect of the introduction of the compensation law has been to alter the doctor-patient relationship by the introduction of the third party. In compensation cases, this third party is the employer, to whom is usually added the fourth party —the insurance carrier; and in the disputed claim there is the fifth party, the Industrial Accident Commission.

Patients with industrial injuries seem, on the basis of their attitudes, to be of three classifications:

A. Those whose ability to work is viewed realistically in terms of the actual physical disability, job requirements, and the therapeutic needs. (This is the normal, healthy attitude.)

B. Those whose emotional attitudes cause resistance to work, which the actual physical disability does not justify. (This is unhealthy and is generally recognizable, at least when it exists in considerable degree.)

C. Those whose emotional drives to work are so strong that their insistence on working is unrealistic in terms of actual disability, of job requirements, or of therapeutic needs. (This may be more frequent than is recognized and, at least in its extreme, may —like attitude "B"—be unhealthy.)

Also, parenthetically, it should be remarked that a patient does not necessarily stay in the same class during the entire length of the claim. Occasionally, the intrinsic mental dynamics of the patient will undergo a change. At other times either skill or awkwardness in the physician's handling of the patient or in the layman's processing of the claim will alter the attitude. This is important as a reminder that efforts should be directed to maintain the healthy attitude of the one class, and to alter beneficially the attitude of the other two.

Ordinarily, the compensation cases of patients in Class "A" do not constitute a major problem in medical or claims administration. Neither do patients in Class "C" usually find it necessary to become involved in any type of dispute to obtain their rights. In Class "B" fall the majority of cases which cause the greatest difficulty in the diagnostic, the therapeutic and the claims field. When awards based on expediency are granted, the beneficiary is most likely to be one of this group.

A full discussion of all the possible dynamics which cause patients to fall into Class "B" is not within the scope of this presentation. It might be mentioned, however, that in this class may be found those who carry hostilities or anxieties of any kind, or are insecure from any cause. The dependency on a compensation award may lie in a work situation to which the claimant is poorly adjusted and from which he wishes to escape, or it may be a reflection of a basic inadequacy totally unrelated to any work situation. Occasionally, one can clearly discern the effect of what Freud describes as "the advantage of an illness," but since the economic, the social, and the psychic maladjustments may be so interwoven, skilled psychiatry may be required to accurately uncover the mental dynamics causing the dependency. It is the author's belief that a well integrated person is seldom found in Class "B," and, if found, that he will seldom remain in that category for long. Also, it is probable that patients can be removed from Class "B" and promoted to the healthier Class "A" in direct ratio to the psychiatric or psychosomatic interest and skill of the attending physician. Laymen also—be they supervisors, employers, claim agents, business agents or any others involved in the handling of the claim or in contact with the claimant—may materially affect the claimant's emotions to his benefit or detriment.

As a subject for practical research for both physicians and social scientists, the thorough and complete study of Class "B" should offer an interesting challenge. The social scientists involved in such a thorough study should include those versed in the practical aspects of the disciplines of economics, psychology, sociology and cultural anthropology to supply all the contributions necessary to analyze the environmental pressures causing the psychic or psychosomatic phenomena.

Granted that such a study, if thorough, would be an ambitious long-term project, its contribution to justice in determining claims should be tremendous. Of course, with varying degrees of success, there are efforts now to present a complete picture of individual cases, but the Commission is still too frequently compelled to depend upon the use of intuition in rendering a decision. Although it seems improbable that all the sciences collectively will ever abolish the need for intuition in forming a judgment, the necessity for its use in considering claims may be greatly minimized if the potentialities of a cooperative study by the social sciences are ever realized.

The well recognized so-called "arbitrary award," very closely related to or synonymous with the intuitive award, perpetuates itself and multiplies by inviting more claims which result in more awards of a similar character—and there is now a well-planted common belief that any claimant who has been injured is "entitled to something" over and above medical care and compensation for the period of temporary disability.

To return to the subject of "liberalization of fact," the author believes that medical statements as to cause and effect (the etiology of the pathologic condition) must be based on medical facts and medical principles, and that these facts may not be stretched or altered because of expediency. The house of medicine will collapse entirely if the study of causes—one of its cornerstones—is to be subject to personal or social expediency. When the weight of medical authority states that beyond a reasonable doubt a given clinical syndrome is "X" disease, it would seem only reasonable that this and all identical cases should be invariable classed as "X" disease. When the administrative authorities of the state find it mandatory by statute, or expedient through interpretation of the law or through interpretation of fact, to render a decision which cannot be overruled by any court that a claimant who has what is described medically as "X" disease really has "Y" injury instead, a chain reaction is begun which will have serious long-term effects on the practice of medicine—and this event should cause concern.

It is not to be denied that individual physicians have contributed to these decisions which physicians collectively deplore. The Industrial Accident Commission must have some justification for its decisions and usually, if not always, there is a report from some physician which either intimates or states that "X" condition might be "Y" injury. It is not unusual to see a two-page medical report describing "X" condition ending with one sentence saying in effect, "Of course 'Y' injury is possible." Frequently the medical examiner is unconsciously ambiguous and he is unaware that a single sentence has nullified the intent of his entire report. In other cases, however, he may deliberately — due to an understandable sympathy for the patient—go out of his way to assist the patient to the extent of indicating an impossible medical situation. This contributes most materially to making it possible to reach a legal finding that asserts what may well be a medical impossibility. The medical profession must not adopt too self-righteous an attitude toward those who sacrifice principle to expediency, because physicians are not unanimously immune to this powerful influence.

It has frequently been advocated that a medical board be established within the Commission to evaluate the medical aspects of all claims. This procedure is established in some other states, and its proponents claim it has practical value as well as theoretical merit.

Those who profit by awards through expediency should not, in the long term, suffer loss if the tide is reversed and principles become paramount over expediency. Expediency which wins benefits through social pressure can ultimately work against present beneficiaries when the pressure of expediency becomes great enough from another quarter. It would seem fair to state that long-term, consistently fair, uniform distribution of benefits will be assured only if all concerned—administrator, physician and beneficiary — understand the fundamental principles involved, honor them, and respect the procedures established and based upon them. The tenure of the personnel on today's scene is limited, at the longest, to a lifetime. Viewed over this relatively short span, the long-term effects of expediency versus principle may not seem serious. Respect for the long-term true interest of whatever administrative, professional, or labor group to which any of those concerned owes allegiance, seems to dictate a conscientious recognition and honoring of sound principles.

The attitudes of the injured, the Commission, and the physician have been discussed in some detail. That the other groups equally involved in claims settlements — the employer, the insurance carrier, and the labor union — have been mentioned only casually does not mean that they are detached from the situation. In their own areas they are subject to similar conflicting pressures of expediency versus principle.

In any situation involving conflicts of beliefs and attitudes between groups, the social "law of the vicious cycle" operates, and either regression or improvement in the attitudes of any of the parties concerned will influence the position of all other interests. Since the Industrial Accident Commission, the clearing house for all claims, is in a position of greatest leverage to change attitudes toward dubious claims, its part in the total situation has been stressed.

There is question whether the dominance of expediency over principle, insofar as it be evident in the compensation insurance field, is a problem primarily of this one field. It seems proper to suggest that the phenomenon is merely a reflection of a nationwide pattern extant in all areas of American life.

The first social security program of the compensation insurance type was introduced in Germany at the time of Bismarck, and it was 60 years before its costs showed any appearance of beginning to level. The costs in California have risen very much

more rapidly in much less time, and the upward trend seems to be proceeding with little diminution of speed.

Social scientists, in personal discussion, have pointed out that the Germans—at least during the period referred to—had a rather universal respect for authority, both individual and institutional. The modern American attitude, on the other hand, was contrasted as being increasingly, for at least 40 years, in conflict with authority (or restrictions by authority) of any type—whether it be personal or institutional, governmental or corporate, temporal or religious. The old-time principles of personal integrity have been giving way to the motto "It's all right if you can get away with it" on all levels of American life in too many areas of social existence.

At the same time there has developed, at the administrative level, a generally enlightened attitude toward socio-economic obligations. This has resulted in accelerated programs of supplying, directly or indirectly, financial assistance for many groups previously neglected. These programs have, in one generation, resulted in an entirely new concept by administrators—be they at national, state or county levels—toward the distribution of expendable funds, whether they be public or corporate. The continuation of such enlightened programs must inevitably depend upon public support. Factors which weaken public support may be economic, social and political. In the administration of all such programs, it should be borne in mind that public resistance, always present in some degree, may swell to great proportions if sparks of economically or socially justified criticism be fanned by strong winds of political prejudice. The "all or nothing" principle then would apply, with partisans divided into "all for it" or "all ag'in' it" groups. A careful approach to the whole problem on a deeper basis, with study of each individual facet of the total situation, should be of great service in insuring perpetuation of the positive values in a soundly liberal Workmen's Compensation Insurance Act.

Most administrators, physicians and lawyers have not been sufficiently trained in the basic fundamentals of the social sciences to adequately understand and anticipate—let alone alter—social forces of the magnitude, and with the momentum, of those set in motion by workmen's compensation laws.

The present generation has two courses open. The first is for each to confine his efforts to his purely professional role, permitting the ultimate pattern of compensation to take shape as it will. The second course is for us, to the extent of our ability, to orient ourselves in the basic principles of economy, clinical psychology, sociology and cultural anthropology, and be better—if not thoroughly—prepared to influence the trends in compensation insurance. We will have valuable assistance in this if we step out of our ivory towers of practical experience, knock on the doors of the halls of learning and invite the interest of those who have the academic knowledge of these disciplines, but who now, too frequently, are isolated behind the ivy-covered walls.

And to the practitioners of professions in the next generation we should offer a better choice than either to ignore the social implications of their life work or to awkwardly grasp for belated help. We ought to insist that our educational institutions make basic courses in the social sciences mandatory for students of business administration and for the premedical and prelegal students. If this is done, the next generation may—with greater facility—improve and perpetuate present means of financial aid, medical care and rehabilitation for the injured workman.

California and Hawaiian Sugar Refining Corporation.

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